

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0805, Town of Hudson v. James F. Kelly, Sr., the court on December 7, 2006, issued the following order:

The petitioner, Town of Hudson (town), appeals an order of the trial court finding that the respondent, James F. Kelly, Sr., is in compliance with the town's zoning ordinances. We reverse and remand.

The interpretation of a zoning ordinance is a question of law which we review *de novo*. Harrington v. Town of Warner, 152 N.H. 74, 79 (2005). Traditional rules of statutory interpretation govern our review; the words and phrases of the ordinance are construed according to the common and approved usage of the language. *Id.*

In this case, the trial court found in its June 2005 order that the principal use of the respondent's property was residential. It later took a view of the property and found that a semi-trailer without wheels used for storage was located thereon. The trial court found the respondent's use of the semi-trailer was in compliance with the town zoning ordinances. We disagree.

The town's zoning ordinances provide that "[a]ny uses not specifically listed in the Table of Permitted Principal or Accessory Uses are hereby expressly prohibited." Hudson Zoning Ordinance § 334-20. The zoning ordinances permit certain structures as accessory uses. In its July 2004 order, the trial court found that "[s]torage trailers are not a permitted accessory use in the G-1 zoning district in which the Property is located," and that "although storage trailers are a permitted principal use in the G-1 zoning district after site plan review and approval by the Hudson Planning Board, the Respondent does not have an approved site plan for storage trailers."

We agree with the trial court's earlier rulings that simply removing the wheels from the trailer did not convert it into a structure. *Cf. Appeal of Town of Pelham*, 143 N.H. 536, 539-40 (1999) (trailers are not fixtures for purposes of taxation). Absent authorization by the planning board, the use of the semi-trailer without wheels is not a permissible use of the respondent's property.

Based upon the record before us, we conclude that the trial court correctly determined in July 2004 that town zoning ordinances did not permit storage trailers as an accessory use in the G-1 district. Given the trial court's additional finding that the respondent had failed to obtain an approved site plan, it was error to later conclude that he was in compliance with town zoning ordinances

given the continued placement of the storage trailer on his property. Accordingly, we reverse and remand for further proceedings consistent with this order.

Reversed and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**